

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Jaeger
PLM
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FILE: B-215773

DATE: December 3, 1984

MATTER OF: Joseph F. Heavey - Reimbursement for
Temporary Quarters Subsistence Expenses

DIGEST:

Veterans Administration employee who was transferred seeks reimbursement for cost of first month's subsistence expenses after relocation on the basis that he occupied temporary quarters. Employee and family resided during that time in a home he eventually purchased. The employee's claim for temporary quarters subsistence expenses is denied because the record contains insufficient indicia of his intention to temporarily reside in the home. Further, the amended travel regulations are not applicable here since the employee reported to duty prior to the October 1, 1982, effective date of the amendment.

This decision is in response to a request for review of an employee's temporary quarters subsistence expense reimbursement claim from Conrad R. Hoffman, Director, Office of Budget and Finance, Veterans Administration (VA), Washington, D.C. The VA has denied the employee's claim for \$3,345, citing several items of evidence which suggested that the employee did not reside in temporary quarters since he intended to reside permanently in the home he inhabited during the first month after his relocation. The Director asks our Office to review the claim in view of a change in the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), para. 2-5.2c., which altered the definition of temporary quarters for reimbursement purposes.

For the reasons that follow, we find insufficient indicia of the employee's intent to reside temporarily in his new home and advise that the employee's reimbursable expenses are governed by the regulations in effect

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at the time of his transfer, not by subsequent regulations in effect when his claim was filed.

FACTS

On December 3, 1981, Joseph F. Heavey, a VA employee, received authorization to transfer from Minneapolis, Minnesota, to Montrose, New York. Mr. Heavey arrived at his new duty station on January 2, 1982, and shortly thereafter, moved into a home in Poughkeepsie, New York. Mr. Heavey's household goods were delivered to the home on January 6. On February 8, 1982, Mr. Heavey finalized his purchase of the same home and also paid \$500 in rent for his prior tenancy.

The Finance Chief for the VA denied Mr. Heavey's claim for subsistence on substantive grounds on May 3, 1983, stating that "there is no evidence of record of an intent on your part to vacate such quarters on any specific date and consequently, the quarters occupied by you and your family constitutes permanent quarters."

The Finance Chief also denied \$131.40 of Mr. Heavey's claim for expenses incurred on January 2, 1982, on the ground that his per diem allowance covered this sum. ^{1/}

On October 3, 1983, Mr. Heavey filed a reclaim of \$3,345 for the subsistence expenses incurred for January 2, 1983, and from January 9 to January 31, 1982, characterizing his lodgings during that period as "temporary quarters."

The Director of Finance Services for the VA reviewed Mr. Heavey's reclaim and denied it on December 5, 1983. He stated, in part, as follows:

"Since shipment of the household goods accompanied Mr. Heavey's relocation and were delivered to the residence now

^{1/} This point seems no longer in contention since Mr. Heavey was later reimbursed \$71.88 for his lodging cost, and the agency has correctly computed his per diem in accordance with FTR para. 2-5.2g.

occupied on a permanent basis and the fact that no lease is available, I must concur with the disallowance of the claim for reimbursement for temporary quarters."

Mr. Heavey states in rebuttal that there was only a potential that he would purchase the house he occupied, he was fully prepared to move at his own expense at the end of 30 days, and that he continued to look at available housing.

ANALYSIS AND DECISION

We have, in effect, been asked to review two issues in the present case: (1) whether this claim should be evaluated under regulations in effect at the time of Mr. Heavey's relocation, or under those in effect when he filed his reclaim; and (2) whether his lodgings in January 1982 were "temporary quarters" under the appropriate regulations.

The regulations in effect when Mr. Heavey transferred to Montrose, New York, read, in relevant part, as follows:

"* * * The term 'temporary quarters' refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his/her immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized." FTR para. 2-5.2c, Supp. 1 (eff. November 1, 1981).

These regulations were amended in August 1982 adding an additional statement that occupancy of quarters which eventually become permanent need not preclude reimbursement where, in the judgment of the employing agency, the employee shows satisfactorily that the quarters occupied were intended initially to be only temporary. This change in effect reversed a line of decisions of our Office holding that occupancy of quarters which become permanent normally precludes an

employee's reimbursement for temporary quarters expenses. The amended regulations also established criteria for determining whether quarters may be considered temporary. FTR para. 2-5.2c, Supp. 4, (eff. October 1, 1982).

However, the amended regulation is not relevant in this case, because the earlier version was in effect at the time of Mr. Heavey's relocation. The amended regulation specifically states that the revision is effective only for employees whose effective date of transfer (date the employee reports for duty at the new official station) is on or after October 1, 1982. Since Mr. Heavey reported for duty on January 2, 1982, the revised regulation does not apply in this case. See E. Louis Fry, B-214243, July 26, 1984.

In response to the second issue, our Office has long held that a determination as to what constitutes temporary quarters is not susceptible of any precise definition, and any such determination must be based on the facts in each case. Robert L. Donelson, B-183239, June 25, 1975. We have further held that when an employee, in connection with a permanent change of station, assumes as a temporary residence permanent type quarters, but ultimately occupies those quarters indefinitely, the determination of whether those quarters were initially temporary or permanent is based upon the intent of the employee at the time he moved into those quarters. Robert D. Hawks, B-205057, February 24, 1982.

The criteria established for determining intent in each case were well summarized by the VA Finance Chief in his May 3, 1983, letter to Mr. Heavey. These criteria include the existence and duration of a lease, Charles J. Wilson, B-187622, June 13, 1977; delivery of household goods to the quarters, Robert D. Hawks, *supra*, B-205057; expressions of intent to find other permanent housing, B-179870, September 26, 1974; the length of residence in the temporary quarters, B-167632, August 20, 1969; the type of quarters, B-167361, August 5, 1969; and the intensity and immediacy of efforts to procure other permanent housing, B-163893, May 9, 1968.

Mr. Heavey states that no lease was signed, and that he and the owner entered into an oral contract for

the 1-month rental. Mr. Heavey also states in the record that he actively sought permanent housing immediately upon his arrival in Montrose. He claims to have viewed more than two dozen homes in his search in January 1982. However, Mr. Heavey provides no evidence of these two claims other than copies of the rent checks and a statement from the sellers affirming the \$500 rental fee but mentioning no oral contract.

Therefore, in the absence of any further evidence, we believe that the agency's factual determination that Mr. Heavey's initial occupancy was not intended to be temporary is supportable by the record.

Accordingly, Mr. Heavey's claim for reimbursement for temporary quarters subsistence expense is denied.

Milton J. Fowler
for Comptroller General
of the United States